

EXPLANATORY STATEMENT

LEGISLATIVE INSTRUMENT

Issued by the Authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991

Heard Island and McDonald Islands Fishery Management Plan 2002

Direction No. HIMIFD 11

CLOSURE OF WATERS ADJACENT TO HEARD ISLAND AND McDONALD ISLANDS

The *Heard Island and McDonald Islands Fishery Management Plan 2002* (the Plan) is a plan of management for the Heard Island and McDonald Islands Fishery (the Fishery) determined under section 17 of the *Fisheries Management Act 1991* (the Act) on 8 May 2002.

Subsection 17(5A) of the Act authorises the inclusion in a plan of management of provision for the giving of directions by the Australian Fisheries Management Authority (AFMA), after such consultations as are set out in the Plan, that fishing is not to be engaged in in the Fishery, or a particular part of the Fishery, during a particular period or periods. Holders of fishing concessions in the Fishery are obliged through the operation of sections 22 and 95 of the Act to comply with such a direction as a condition of the grant of a fishing right.

Direction No. HIMIFD 11 revokes a previous direction, Direction No. HIMIFD 6 made on 1 April 2004 but which commenced on 21 April 2004, which was in the same form and to the same effect.

The Fishery

The new Direction in the same manner as the previous Direction prohibits fishing in waters between 12 and 13 nautical miles of the Heard Island and McDonald Islands. Heard Island and McDonald Islands are included on the World Heritage List. In addition, the Islands themselves and the surrounding territorial waters, which extend for a distance of 12 nautical miles from the Islands, form part of the Heard Island Wilderness Reserve. An additional buffer zone of 1 nautical mile has been implemented by AFMA to complement the 12-mile prohibition, so fishing is prohibited within 13 nautical miles of Heard Island and McDonald Islands. The Wilderness Reserve is managed by the Australian Antarctic Division (AAD) under the *Heard Island Wilderness Reserve Management Plan* established under the *Heard Island and McDonald Islands Environment Protection and Management Ordinance 1987*.

Consultation

Subsection 31(1) of the Plan provides for AFMA to give a direction as referred to in subsection 17(5A) of the Act. Subsection 31(2) provides that before giving a direction AFMA must consult with, and consider the views of the Sub-Antarctic Fisheries Management Advisory Committee (SouthMAC) and the Sub-Antarctic Resource Assessment Group (SARAG). Consultation on the new Direction with SouthMAC and SARAG has taken place in accordance with subsection 31(2) of the Plan.

Both SARAG and SouthMAC are supportive of its implementation.

Regulatory impact analysis

The Office of Best Practice Regulation has advised that no regulatory impact analysis, in the form of a Business Cost Calculator Report or Regulation Impact Statement, is required (reference 10076).

Commencement

Direction No. HIMIFD 11 commences at the start of 22 April 2009.

Details of the Direction are set out below:

- Clause 1** Provides that the direction is Direction No. HIMIFD 11.
- Clause 2** Provides for the commencement of the Direction.
- Clause 3** States to whom the Direction applies.
- Clause 4** Sets out the period of application of the Direction.
- Clause 5** Provides for the interpretation of terms used in the Direction.
- Clause 6** Prohibits fishing one nautical mile seaward of the outer edge of the territorial sea of the Territory of Heard Island and McDonald Islands.
- Clause 7** Provides for an exemption to the Direction if a person is fishing under a Scientific Permit.
- Clause 8** Revokes Direction No. HIMIFD 6.